IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

WP(C).No. 29249 of 2005(F)

PETITIONER:

K.VIJAYAN(426), CLERK-CUM-CASHIER,
SOUTH MALABAR GRAMIN BANK, KARUVARAKUNDU BRANCH,
MALAPPURAM.

BY ADV. SRI.N.SUGATHAN
SRI.A.V.RAMAKRISHNA PANICKER
SMT.R.SEEMA
SMT.VARSHA BHASKAR

RESPONDENTS:

1. **THE SOUTH MALABAR GRAMIN BANK,**
   REPRESENTED BY ITS CHAIRMAN, HEAD OFFICE,
   MALAPPURAM.

2. **THE STAFF SELECTION COMMITTEE,**
   REPRESENTED BY THE CHAIRMAN, SOUTH MALABAR
   GRAMIN BANK, HEAD OFFICE, MALAPPURAM.

3. **THE UNION OF INDIA, REPRESENTED BY THE**
   SECRETARY TO GOVERNMENT, MINISTRY OF FINANCE,
   DEPARTMENT OF ECONOMIC AFFAIRS & BANKING DIVISION,
   NEW DELHI.

4. **M.SREEDHARAN (720) OFFICER SCALE I,**
   SOUTH MALABAR GRAMIN BANK, VILANGAD BRANCH,
   VELLIYODE P.O., KOZHIKODE-673 506.

5. **K.VELAYUDHAN(771), OFFICER SCALE I,**
   SOUTH MALABAR GRAMIN BANK, KARULAI BRANCH,
   KARULAI P.O., MALAPPURAM-679 344.

6. V.M.PREMARAJAN(736),
OFFICER SCALE I, SOUTH MALABAR GRAMIN BANK,
PALAKKAD MAIN BRANCH, T.B.ROAD, PALAKKAD-678 014.

7. K.K.VELAYUDHAN (904), OFFICE SCALE I,
SOUTH MALBAR GRAMIN BANK, PUZHAKKATTIRI BRANCH,
PUZHAKKATTIRI P.O., MALAPPURAM-679321.

8. K.GANGADHARAN (951), OFFICER SCALE I,
SOUTH MALABAR GRAMIN BANK, VAZHAVATTA BRANCH,
VAZHAVATTA P.O., WAYANAD-673 122.

BY ADV. SRI.U.K.RAMAKRISHNAN,SC,S.M.GRAMIN BANK for R1
SRI.K.M.JAMALUDHEEN
SMT.LATHA PRABHAKARAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/08/2007 ALONG WITH WPC NO. 27805 OF 2005,
THE COURT ON 18/09/2007 DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**RELEVANT EXTRACT OF THE RULES RELATING TO THE POST OF SCALE I OFFICER.**
EXT.P2:	**COPY OF MEMO NO.89/2004 DTD. 26/11/2004 OF THE BANK.**
EXT.P3:	**COPY OF MEMO NO.90/2004 DTD. 6/12/2004 OF THE BANK.**
EXT.P4:	**COPY OF MEMO NO.19/2005 DTD. 5/03/2005 OF THE BANK.**
EXT.P5:	**COPY OF MEMO NO.46/2005 DTD. 22/07/2005 OF THE BANK.**
EXT.P6:	**COPY OF MEMO NO.45/2000 DTD. 13/04/2000 OF THE BANK.**
EXT.P7:	**COPY OF REPRESENTATION DTD. 1/08/2005 OF THE PETITIONER.**
EXT.P8:	**COPY OF THE REPLY DTD. 28/09/2005 OF THE CHAIRMAN OF THE BANK.**

/TRUE COPY/

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ANTONY DOMINIC, J.

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W.P.(C) Nos. 29249 & 27805 OF 2005

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Dated this the 18th September, 2007

J U D G M E N T

The petitioner in W.P.(C) No.29249 of 2005, belongs to a Schedule Caste and is working as a Clerk-cum-Cashier in the 1st respondent Bank, since 21.03.1989. The petitioners in W.P.(C) No.27805 of 2005, belong to ST category and are working as Clerk-cum-Cashiers in the 1st respondent Bank, since 15.02.1989, 17.02.1989 and 01.02.1990 respectively. All these petitioners aspires for promotion to the cadre of Officer Scale 1 – Group 1, in the vacancies reserved for SC/ ST categories and these writ petitions have been filed seeking to quash the promotion of the party respondents, who are Juniors to them an Officer Scale I. They are also seeking a writ of mandamus to promote them to the cadre of Officer Scale 1 with effect from 22.07.2005 with all consequential benefits.

2. The brief facts necessary to be noted are that the 1st respondent is a Regional Rural Bank established under the provisions of the Regional Rural Banks Act 1976 (hereinafter referred to as 'the Act' for short). By notification dated 29th July 1998 (Ext.P1 in W.P.(C) No.29249 of 2005), the Government of India in exercise of their powers under Section 29 of the Act, issued the Regional Rural Banks (Appointment and Promotion of Officers and Other Employees) Rules 1998 (hereinafter referred to as 'the Rules') for short). In terms of the Rules, 50% of the posts of Scale 1 Officer are to be filed up by promotion, which shall be made on the basis of Seniority-cum-Merit. On 26.11.2004, the 1st respondent issued Ext.P2 in W.P.(C) No.29249 of 2005 announcing that the Board of Directors permitted promotion to 35 vacancies, including 5 backlog vacancies of SC/ ST, in the Officer Scale 1 cadre. Thereafter, the bank issued

Memo No.90/2004 dated 06.12.2004 (Ext.P3 in W.P.(C) 29249 of 2005), annexing a list of 788 employees eligible to appear in the written test. Accordingly, written test was conducted on 16.01.2005 when the petitioners in these writ petitions appeared for the same. Thereafter, the bank published a list of 76 candidates who had qualified for interview for the Officer Scale I cadre. In the list, among the SC candidates, the petitioner in W.P.(C) No.29249 of 2005 is 2nd and at Serial No.29. Among the ST candidates the petitioners in W.P.(C) No.27805 of 2005 are 2nd, 3rd and 6th and at Serial Nos.68, 69 and 72 of the list. All the 76 candidates were interviewed by a Staff Selection Committee constituted in terms of clause 2 (iii) of the Rules and the bank published Memo No. 46/2005 dated 22.07.2005 (Ext.P5 in W.P.(C) No.29249 of 2005), containing the list of 35 employees promoted to Officer Scale I, with effect from 22.07.2005 which did not include the petitioners. The list inter alia includes 6 candidates belonging to SC category and 6 candidates belonging to ST category. According to the petitioner in W.P.(C) No.29249 of 2005, respondents 4 to 8 who are included in Ext.P5 are Juniors to him. Similarly, the petitioners in W.P.(C) No. 27805 of 2005 contend that respondents 2 to 6 are Juniors to them. Complaining that in effecting promotion as above, the bank has violated the rule of seniority -cum- merit, representations were made and on its rejection, these writ petitions have been filed.

3. The 1st respondent Bank filed a detailed counter affidavit. It is stated that based on the guidelines issued by the Government of India, reservations for SC/ ST categories have been provided by the Bank and lower qualifying mark has been stipulated for them in the written test. According to the Bank, the Competent Authority viz., the Selection Committee, is prescribing in advance the minimum standard of merit i.e., the bench mark, required for selection under the rule seniority-cum-merit. It is stated that the bench mark so fixed is the minimum. The candidates who have undergone the process of selection and have achieved the bench mark are considered for promotion in the order of seniority and that the senior whose scores equal to or above the bench mark, is considered first and only

thereafter, the junior is considered. The banks states that this process will continue till the vacancies are exhausted and that the seniors who score less than the bench mark are not selected.

4. The bank explains that the Selection Committee in its meeting held on 20.06.2005 decided to fix the cut off mark (bench mark) at 59 out of 100 for general candidates and 55 out of 100, for SC/ ST candidates. It is stated that among the SC candidates, Sri.P. Mohanan is senior to the petitioner in W.P.(C) No.29249 of 2005 and had scored 56.53 marks in the aggregate and hence he was selected and that the petitioner, the next senior SC candidate, was not promoted as he had scored only 41.96 marks. It is stated that respondents 4, 5, 6, 7 and 8 had scored 57.43, 56.26, 56.23, 55.86 and 56.53 respectively. In so far as the petitioners 1 to 3 in W.P.(C) No.27805 of 2005 are concerned, it is stated that they had scored only 45.27, 50.80 and 49.25 respectively. It is also stated that respondents 2 to 6 therein had scored 58.15, 65.59, 56.18, 57.09 and 59.21 marks respectively. Thus, according to the bank the Competent Authority had fixed the 55 out of 100 as the bench mark for SC/ ST candidates, and that the petitioners in these writ petitions did not score the minimum required marks and it was therefore that they were not selected. As far as compliance with the Rule of seniority-cum-merit is concerned, the contention of the bank is that the candidates who have achieved the bench mark, were considered for promotion in the order of seniority and in finalising Ext.P5 in W.P.(C) No. 29245 of 2005, seniority has been maintained. This according to the Bank will satisfy the requirement of the rules. Petitioners have filed affidavits in reply, contradicting the claims of the Bank.

5. The main contention that is raised by the Learned Counsel for the writ petitioners is that the Staff Selection Committee could not have, fixed any bench mark, in the absence of any power, conferred under the Rules. It is argued that in terms of the Rules, those SC/ ST candidates who have achieved 35% marks in the written test are entitled to be interviewed and their performance appraised

and those who have not been found unfit for any reason, are entitled to be promoted, applying the Rule seniority-cum-merit. In the procedure that was adopted by the Bank, they have given a go-bye to the said rule and have adopted the rule of merit-cum-seniority. On the other hand, the Learned Counsel for the 1st respondent bank submits that the Staff Selection Committee is entitled to fix the bench mark, which is the minimum required for the efficient functioning of the bank and by considering those whose satisfy the bench mark, in the order of seniority, the Bank has followed the Rule of seniority-cum-merit.

6. Having considered the rival submissions made by the Learned Counsel, in my view, the question that requires to be considered is whether, in view of the provisions of the Rules, the Staff Selection Committee had the power to fix bench mark of 59 out of 100 for general candidates and 55 out of 100 for SC/ ST candidates. If my conclusion on this is in the negative, the further question that will arise for consideration is whether on the facts of this case, the promotion of the party respondents should be interfered with.

7. To answer the first question, a perusal of the relevant provisions of the Rules is necessary. Rule 6 provides that all vacancies determined under Rule 5 shall be filled by promotion or by direct recruitment in accordance with the provisions contained in the rule and the 3rd schedule. The 3rd schedule provides that 50% of the posts of Officers Scale 1 are to be filled up by promotion and clauses 3(d), (f), (i), (j), being relevant, are extracted below for reference:

"(d)	Whether promotion to be made on seniority basis or seniority -cum-merit basis	Promotions shall be made on the basis of seniority -cum-merit
(f)	Mode of Selection	(i) In the case of direct recruitment, the selection of candidates shall be made by the BSRB on the basis of written test and interview and in accordance with the procedure specified by them.

(ii) In the case of promotion, the selection of the candidates shall be made by the Committee on the basis of written test and performance appraisal reports.

(i) Number of candidates to be considered for promotion } All eligible candidates shall be considered for promotion

(j) Selection process of promotees

The selection shall be on the basis of performance in the written test, interview and five years performance Appraisal Reports as per the division of marks given below.

(a)	Written Test	70 marks
(b)	Interview	20 marks
(c)	Performance Appraisal Reports	10 marks
	Total Marks	100 marks

(A) Written Test (70 Marks)

The candidate shall be required to appear for written test comprising test in English and test in Banking Law, practice and procedures including working procedures in the Regional Rural Bank concerned.

70 marks allotted to written test shall be further divided as under

English 35 marks

Banking Law Practice and Procedure 35 marks

Total marks 70 marks

A list of only those candidates who secure a minimum of 40% marks each in English, Banking Law, Practice and Procedures shall be prepared. The Bank, thereafter shall prepare the list of selected candidates in the order of seniority to the extent of two hundred percent of the vacancies for promotion for the purpose of

	calling for interview.
(B) Interview (20 marks)	There shall be no minimum qualifying marks in the interview.
(C) Assessment of Performance Appraisal Report	The Performance Appraisal Reports for the preceding three years of the concerned employees, shall be considered.

It is relying mainly on the above provisions and in particular, the clauses providing for the selection and selection process, that the bank is contending that although the rule provide for promotion on the basis of seniority-cum-merit, it involves an element of selection also and that the rule permits fixation of bench mark. The scope of the seniority-cum-merit has been examined by the Supreme Court in the cases of ***B.V. Sivaiah and Others Vs. K. Addanki Babu and Others (1998 (6) SCC 720), Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and another (2000 (6) SCC 698)***. The Division Bench judgment of this Court in W.A.No.1712 of 2000, confirmed by the Supreme Court in its order dated 1st November 2004 in SLP (C) No. 10509 of 2004 was also referred to.

Paragraphs 17, 18 and 37 of ***1998 (6) SCC 720***, are extracted below for reference:

> "***On behalf of the promoted officers, it was urged that for the purpose of promotion on the basis of seniority-cum-merit, seniority means the length of service and that among officers who were appointed on the same date and have the same length of service, seniority can have no bearing and promotion has to be made on a comparative assessment of***

merit of such officers. We are unable to agree. While applying the principle of seniority-cum-merit for the purpose of promotion, what is required to be considered is the inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service, but as between employees appointed on the same date and having the same length of service, it is generally determined on the basis of placement in the select list for appointment. Such determination of seniority confers certain rights and the principle of seniority-cum-merit gives effect to such rights flowing from seniority. It cannot, therefore, be said that in the matter of promotion on the basis of seniority-cum-merit, seniority has no role where the employees eligible for promotion were appointed on the same date and have the same length of service.

We thus arrive at the conclusion that the criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit

of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit.

During the course of hearing of the appeal, the Learned Counsel for the respondent Bank has placed before us the relevant documents relating to the impugned selection and promotion. On perusal of the said documents, we find that 50 marks out of the total of 100 marks were prescribed as the minimum qualifying marks for interview and only those who had obtained the qualifying marks in interview were selected for promotion on the basis of seniority. It was, therefore, a case where a minimum standard was prescribed for assessing the merit of the candidates and those who fulfilled the said minimum standard were selected for promotion on the basis of seniority. In the circumstances it cannot be said that the selection has not been made in accordance with the principle of "seniority-cum-merit"."

Paragraph 12 of the judgment reported in 2000 (6) SCC 698, to the extent relevant, is extracted below for reference:

"***"seniority-cum-merit" postulates the requirement of certain***

> ***minimum merit or satisfying a benchmark previously fixed. Subject to fulfilling this requirement the promotion is based on seniority. There is no requirement of assessment of comparative merit both in the base of seniority-cum-fitness and seniority-cum-merit***."

The Division Bench of this Court while disposing of W.A.No.1712 of 2000, was only concerned with the reasonableness of the bench mark prescribed by the Bank and has not pronounced on the competence of the Selection Committee to fix any such bench mark. This is more clear from the order of the Supreme Court in SLP (C) No.10509 of 2004, which confirmed the Division Bench Judgment in the following terms:

> "***What the High Court wished to emphasise was the fact that where promotion is sought to be given on the principle of seniority-cum-merit or seniority-cum-fitness, the minimum qualifying marks should not be very high, since the guiding principle is to grant promotion on the basis of seniority, subject out the weeding out of the unfit. Obviously, in each case the authority granting the promotion has to fix the bench mark keeping in view this principle.***"

8. A detailed scrutiny of the judgments referred to above itself would indicate that once seniority-cum-merit is the basis of promotion, given the necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority. However, the mode seniority-cum-merit enables an assessment to be made of the minimum necessary merit, requisite for the efficiency of administration. But, such assessment cannot be construed as

importing an assessment of comparative merit of officers eligible for promotion and the Rule only recognizes that for assessing the minimum necessary merit, the Competent Authority can lay down the standard and prescribe the mode of assessment of merit of the employee who is eligible for promotion. The mode so prescribed can be assigning marks for the interview or the performance appraisal, based on service record. Once such assessment is completed, seniority gains importance and a less meritorious senior will get promotion earlier than a meritorious junior. Therefore only to this limited extract assessment of merit is permissible, in cases where seniority-cum-merit is the rule prescribed.

9. The Learned Counsel for the writ petitioners proceed to content that the Rule provided that those candidates belonging to SC/ ST categories who have secured a minimum of 35% marks are entitled to be interviewed and their performance appraisal reports assessed. The Learned Counsel points out that the rule provided no qualifying marks in the interview or assessment of performance appraisal reports and in the absence of a finding that they are unfit, petitioner are entitled to be promoted. According to the Learned Counsel, in the absence of any such provision in the rules, the Selection Committee could not have fixed the bench mark. Particular reference has been made in this context to paragraph 10 of the counter affidavit filed by the Bank where it has been stated that;

> "**it is submitted that in the selection process as per Exts.P2 and P3, the Staff Selection Committee viz., the 2nd respondent in its meeting held on 20.06.05 decided to fix the cut of mark (bench mark) at 59 out of 100 for general candidates and 55 out of 100 for SC/ ST candidates**".

It is argued that if bench mark is to be prescribed the same should be incorporated in the rule itself and that the rule having been framed by the Central

Government in exercise of its power under Section 29 of the Act, neither the Bank, nor the Staff Selection Committee constituted in terms of Rule 2(iii), could have fixed the bench mark. In this context the Learned Counsel for the writ petitioners rely on the judgments of the Supreme Court in the case of **Umesh Chandra Shukla Vs. Union of India and Others (1985 (3) SCC 721), Durgacharan Misra Vs. State of Orissa and Others (1987 (4) SCC 646), Dr. Krushna Chandra Sahu and Others Vs. State of Orissa and Others (1995 (6) SCC 1) and Bhagwandas Tiwari & Others Vs. Dewas Shajapur Kshetri (AIR 2007 SC 994).**

In **1985 (3) SCC 721**, it has been held as follows:

> "***But on going through the Rules, we are of the view that no fresh disqualification or bar may be created by the High Court or the Selection Committee merely on the basis of the marks obtained at the examination because clause (6) of the Appendix itself has laid down the minimum marks which a candidate should obtain in the written papers or in the aggregate in order to qualify himself to become a member of the Judicial Service. The prescription of the minimum of 600 marks in the aggregate by the Selection Committee as an additional requirement which the candidate has to satisfy amounts to an amendment of what is prescribed by clause (6) of the Appendix".***

In **1987 (4) SCC 646** it has been held as follows:

> "*The Rules have been framed under the proviso to Article 309 read with the Article 234 of the Constitution. Article 234 requires that the appointment of persons other than District Judge to the Judicial Service of State shall be made by the Governor of the State. It shall be in accordance with the rules made by the*

Governor in that behalf after consultation with the State Service Commission and with the State High Court. The Rules in question have been made after consultation with the Commission and the State High Court. The Commission which has been constituted under the Rules must, therefore faithfully follow the Rules. It must select candidates in accordance with the Rules. It cannot prescribe additional requirements for selection either as to eligibility or as to suitability. The decision of the Commission to prescribe the minimum marks to be secured at the viva voce test would, therefore, be illegal and without authority".

In **1995 (6) SCC 1**, it has been held as follows:

"***The members of the Selection Board or for that matter, any other Selection Committee, do not have the jurisdiction to lay down the criteria for selection unless they are authorized specifically in that regard by the Rules made under Article 309. It is basically the function of the rule-making authority to provide the basis for selection***".

It is also held that;

"***The Selection Committee does not even have the inherent jurisdiction to lay down the norms for selection nor can such power be assumed by necessary implication. In P.K. Ramachandra Iyer v. Union of India, it was observed: (SCC pp. 180-181, para 44)***

> ***"By necessary inference, there was no such power in the ASRB to add to the required qualifications. If such power is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm".***"

In **AIR 2007 SC 994**, it has been held that;

> "***The impugned judgment of the learned Single Judge and Division Bench of the High Court missed one basic factor. The circular nowhere refers to the minimum marks being relatable to criteria A and C and nowhere there is a stipulation of obtaining minimum 35 marks as a compulsory measure. If really the intention was to apply the said minimum marks to said criteria it would have been specifically provided that way. It is noted by the High Court that in the circular or in the 115th or 117th report of the respondent No.1-Bank there was no mention about this aspect. The doctrine of reading down the provisions has really no application to the facts of the case. If the stand of respondents is accepted, it would mean addition of a condition which is not specifically provided for. That is impermissible***".

On the other hand the Learned Counsel for the Bank would heavily rely on the Division Bench judgment in W.A.No. 1712 of 2000 as confirmed by the Supreme Court in SLP (C) No.10509 of 2004, about which reference has been made earlier. As already found by me the judgment does not help the bank in any manner. From the 1st paragraph of the Division Bench judgment, it is clear that it was the bank which fixed the bench mark, referred to in that judgment. Secondly, this court did not examine the competence of the bank to fix bench mark, but on the other hand, had only examined the reasonableness of the same. It is on that reasoning that SLP (C) No.10509 of 2004 was dismissed confirming the judgment of the Division Bench.

10. On a reading of the aforesaid judgments, the legal position appears to be settled that prescription of eligibility criteria is not within the domain of the selection committee, unless they are specifically authorized in that behalf. The

Committee cannot prescribe any additional qualifications and no fresh disqualification or bar can be created by it. The role of the selection committee is to select candidates suitable for the post, applying the rule as laid down by the rule making authority.

11. In this case it is admitted by the 1st respondent Bank that it was the Staff Selection Committee, and not even the Bank, which has laid down the bench mark. Applying the law as laid down by the Supreme Court in the aforesaid cases, I hold that the Staff Selection Committee exceeded in its jurisdiction in fixing the bench mark for selection to the post of Officer Scale I.

12. But, with the above finding on the 1st question, the issue does not get resolved. The further question to be examined is even if the Staff Selection Committee had acted beyond its jurisdiction, whether promotion needs to be interfered with. For answering this question, I have to examine whether the petitioners failure to get selected was on account of the benchmark fixed.

13. During the course of the arguments, the Learned Counsel for the Bank made available the consolidated sheet of the marks obtained by all the 76 candidates who had qualified for interview and the report dated 22.06.2005 submitted by the Staff Selection Committee to the Board of Directors of the 1st respondent Bank. On a comparative reading of these two documents, I noticed that what the Staff Selection Committee had done was that 35 out of 76 candidates who had scored the highest marks have been identified for promotion and a list of these 35 candidates has been prepared, arraying them in the order of their seniority and they were recommended for promotion. This includes 6 SC and 6 ST candidates also.

14. It is to be noted that the top scorer among the 35 is Sri. Sooryanarayanan P.K who had scored 70.24 marks. While he has been included in Ext.P5 list in W.P.(C)No. 29249 of 2005 at Serial No.24, Sri. Parangodan. P who had secured

only 66.53 marks has been included at Sl. No.1. Among the candidates in the list, it is Sri.Anandan. M at Serial No.30, an ST candidate, who had secured the lowest mark of 55.27. The 6th respondent in W.P.(C)No. 27805 of 2005, who despite having secured 59.21, is included at Serial No.35 of Ext.P5 list. This obviously, indicates that while finalising the list of candidates recommended for promotion the bank has followed seniority of the employees. If merit-cum-seniority was the rule that was followed, Sri. Sooryanarayanan now Sl. No.24 would have been Sl. No. 1 and Sri. Anandan, now at Sl. No.30, would have been, at Sl. No.35.

15. The rules provide that for interview and Performance Appraisal Reports 20 and 10 marks each are earmarked. Therefore, the Rule recognizes power for the Staff Selection Committee to assign marks to the candidates based on their performance at the interview and on assessment of their Performance Appraisal. Once that power is available to the Staff Selection Committee, the competence of the Committee to assign marks for these two factors which is a part of the selection process, has to be conceded. Once it is so done, the only course available to the Selection Committee is to select those candidates who are the top scorers in the selection process. If a different interpretation is attempted, that will render the provisions of he Rule providing marks for interview and assessment of Performance Appraisal Reports meaningless. While interpreting the rule the court is bound give full meaning to each word of the Rules and so done, I think, that this is the only possible interpretation. In this case, out of the 76 candidates who had qualified for interview, the bank has selected the 35 top scorers among them. Thereafter, on the basis of their inters seniority, these 35 candidates have been ranked and recommended for promotion and Ext.P5 is the list so finalised.

16. I would have been tempted to take a different view had it been a case where sufficient number of candidates had not qualified the bench mark, to fill up the number of vacancies notified. In such a case, it could have been contended

by those who have not scored the bench mark level that it was because of it that they lost the opportunity for promotion. They have lost in the selection conducted as envisaged in the Rules, not on account of the bench mark fixed but only on account of the fact that they had scored lesser marks as compared to those included in Ext.P5 list. This would have been the situation even if the Committee had not fixed any benchmark. When sufficient suitable candidates have been identified in accordance with the Rules, relying on the expression seniority-cum-merit in the rules, petitioners cannot insist that inspite of their inferior qualities, they should be promoted. Therefore, on facts, it is established that the bench mark prescribed by the Bank has not caused any prejudice to the petitioners.

17. The Learned Counsel for the petitioners in W.P.(C)No.27805 of 2005 raised a contention that since 55 out of 100 was fixed as the cut off mark, even if the SC/ST candidates had scored full 30 marks in the interview and performance appraisal, they would not have attained the bench mark. This contention is on the basis that for a reserved candidate 35% out of 70 marks i.e., 24.5, alone was necessary to qualify for interview and that even if 30 is added to this, he will secure only 54.5 marks while the bench mark fixed was 55. This argument though, at the first blush would appear to be attractive, I do not find any substance in this contention either. 35% is only the minimum and from the marks scored by the ST candidates, it is seen that it ranges between 65.59 to 55.27. This shows that despite the aforesaid possibility as canvassed by the Learned Counsel, competent candidate belonging to ST category were available. Therefore, it was not on account of the bench mark that the petitioners in W.P. (C)No. 27805 of 2005 have lost promotion.

18. Though, I accept the contention of the Learned Counsel for the writ petitioners, that the Staff Selection Committee did not have the power to fix any bench mark on the facts on these cases, I find that it was not on account of the bench mark that the petitioners could not get promotion. It was only on account

of the lower marks secured by them in the interview and assessment of their Performance Appraisal Reports. Therefore, the bench mark fixed has not caused any prejudice to the petitioners, warranting interference with the promotion of the party Respondents.

I do not find any merit in the petitions and accordingly, the cases will stand dismissed.

ANTONY DOMINIC, JUDGE

pr/jan.